

# **Categorical Exclusion (CX) Documentation Format for Actions Other Than Hazardous Fuels and Fire Rehabilitation Actions**

## **Lufthansa German Air DOI-BLM-AZ-P020-2010-0026-CX**

### **A. Background**

**BLM Office:** Lower Sonoran Field Office

**Lease/Serial/Case File No.:** AZA-25062

**Proposed Action Title/Type:** Lufthansa German Air Right-of-Way (ROW) Grant Renewal

**Location of Proposed Action:** Gila & Salt River Meridian, Maricopa County, Arizona,

T. 3 S., R. 1 W., Section 27, SW $\frac{1}{4}$ SW $\frac{1}{4}$  and T. 3 S., R. 1 E., Section 31, SE $\frac{1}{4}$ SE $\frac{1}{4}$ .

Map Designations: See attached map.

**Description of Proposed Action:** Renewal of ROW, grant AZA-25062, issued for two existing Instrument Landing System (ILS)/Visual Flight Rules (VFR) training facility sites. Site 1 being 300 feet wide by 300 feet long and Site 2 being 30 feet wide by 30 feet long, more or less. The facilities contain approximately 2.080 total acres.

### **B. Land Use Plan Conformance:**

Land Use Plan (LUP) Name: Lower Gila South Resource Management Plan (RMP), dated June 1988, and as amended, July 2005.

The proposed action is in conformance with the applicable LUP because it is specifically provided for in the following LUP decision(s): Lower Gila South RMP, Chapter 2, under Land Tenure states:

*“Lower Gila Resource Area processes a variety of land actions in the Lower Gila South RMP/EIS area – rights-of-way, communication sites, easements, permits, and unauthorized occupancy. All land cases would continue to be evaluated on a case-by-case basis.”*

### **C: Compliance with NEPA:**

The Proposed Action is categorically excluded from further documentation [i.e., Environmental Analysis (EA), Environmental Impact Statement (EIS)] under the National Environmental Policy Act (NEPA) in accordance with 516 DM2, Appendix 1, or 516 DM 11.9 Appendix 4, E(9) states:

*“Renewals and assignments of leases, permits, or rights-of-way where no additional rights are conveyed beyond those granted by the original authorizations.”*

This categorical exclusion is appropriate in this situation because there are no extraordinary circumstances potentially having effects that may significantly affect the environment. The proposed action has been reviewed, and none of the extraordinary circumstances described in 516 DM2 apply.

| CRITERIA  | Comment (YES/NO) | Staff Initial |
|---|------------------|---------------|
| 1. Have significant impacts on public health and safety?  | <u>NO</u>        | <u>HC</u>     |
| 2. Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness or wilderness study areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds (Executive Order 13186); and other ecologically significant or critical areas? | <u>NO</u>        | <u>HC</u>     |
| 3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)]?   | <u>NO</u>        | <u>HC</u>     |
| 4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks?  | <u>NO</u>        | <u>HC</u>     |
| 5. Establish a precedent for future action, or represent a decision in principle about future actions, with potentially significant environmental effects?  | <u>NO</u>        | <u>HC</u>     |
| 6. Have a direct relationship to other actions with individually insignificant, but cumulatively significant, environmental effects?  | <u>NO</u>        | <u>HC</u>     |
| 7. Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the Bureau or office?  | <u>NO</u>        | <u>HC</u>     |
| 8. Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species?   | <u>NO</u>        | <u>HC</u>     |
| 9. Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment?  | <u>NO</u>        | <u>HC</u>     |
| 10. Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898)?  | <u>NO</u>        | <u>HC</u>     |
| 11. Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners, or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007)?  | <u>NO</u>        | <u>HC</u>     |

12. Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area, or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112)? NO HC

#### EXISTING EA/EIS REVIEW FOR ADMINISTRATIVE DETERMINATION

This proposed action is addressed in the following existing BLM EAR/EIS:

An Environmental Assessment (EA) was completed, on December 3, 1991, for the original grant. Another EA was done, March 23, 1992, before the ROW was amended on March 26, 1992.

This EA/EIS has been reviewed against the following criteria to determine if it covers the proposed action.

1. The proposed action is a feature of, or essentially the same as, the alternative selected and analyzed in the existing document.
2. A reasonable range of alternatives was analyzed in the existing document.
3. There has been no significant change in circumstances or significant new information germane to the proposed action.
4. The methodology/analytical approach previously used is appropriate for the proposed action.
5. The direct and indirect impacts of the proposed action are not significantly different than those identified in the existing document.
6. The proposed action would not change the previous analysis of cumulative impacts.
7. Public involvement in the previous analysis provides appropriate coverage for the proposed action.

#### SIGNATURE(S) FOR COMPLIANCE

PREPARER: /S/ Hillary Conner DATE: 8/5/2010

## DECISION

This action will not have a direct or indirect adverse impact on energy development, production, supply and/or distribution. It is my decision to implement the project, as described, with the mitigation measures identified below and stipulations attached.

### MITIGATION MEASURES/OTHER REMARKS:

1. This grant or permit is issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations (CFR) part 2800 and regulations to be promulgated by the Secretary of the Interior pursuant to Public Law 94-579.
2. Any cultural and/or paleontological resources (historic or prehistoric site or object) discovered by the holder or any person working on the holders behalf, on public or federal land, shall be immediately reported to the Authorized Officer (AO). The holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the AO. An evaluation of the discovery will be made the AO to determine the appropriate actions to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of the evaluation and any decision as to the proper mitigation measures will be made by the AO after consulting with the holder.

### **D: Signature**

Authorizing Official: \_\_\_\_\_/S/ Emily Garber\_\_\_\_\_ Date: \_\_\_\_\_8/20/2010\_\_\_\_\_

Name: Emily Garber

Title: Lower Sonoran Field Office Manager

### **Contact Person**

For additional information concerning this CX review, contact: Hillary Conner, Realty Specialist, at 623-580-5649.

**Note:** A separate decision document must be prepared for the action covered by the CX. See Attachment 1.

## Approval and Decision Attachment 1

**Compliance and assignment of responsibility:** Lands Program

**Monitoring and assignment of responsibility:** Lands Program

**Review:** *We have determined that the proposal is in accordance with the CX criteria and that it would not involve any significant environmental effects. Therefore, it is categorically excluded from further environmental review.*

**Prepared by:** \_\_\_\_\_/S/ Hillary Conner\_\_\_\_\_ **Date:** 8 / 5 / 2 0 1 0

**Hillary Conner**  
Realty Specialist

**Reviewed by:** \_\_\_\_\_/S/ Leah Baker\_\_\_\_\_ **Date:** 8 / 1 1 / 2 0 1 0

**Leah Baker**  
Planning & Environmental Coordinator

**Reviewed by:** \_\_\_\_\_/S/ Jim Andersen\_\_\_\_\_ **Date:** 8 / 6 / 2 0 1 0

**Jim Andersen**  
Lands & Realty Team Lead

**Project Description:** The proposed action is to renew Lufthansa German Air (Lufthansa) ROW grant, AZA-25062, for two existing ILS/VFR training facility sites. On February 26, 1992, Lufthansa was granted a grant for two facilities with the right to renew. On March 26, 1992, Lufthansa amended the ROW to relocate one facility and increase the size of the other. The current ROW grants a facility measuring 300 feet x 300 feet, for the first site, and 30 feet x 30 feet, for the second. The total combined acreage of the sites are approximately 2.080, more or less. The grant was issued for a term of 20 years, pursuant to Title V of the Federal Land Policy and Management (FLPMA) of October 21, 1976 (90 Stat. 2776; 43 United States Code 1761) Public Law 94-579. Access to the site is via existing county road ROWs. Rental for AZA-25062 is current and Lufthansa is in compliance with the terms and conditions of the original grant. To date, the existing facilities remain in use. Should the proposed renewal be approved, the ROW would be granted for a term of 30 years, effective February 26, 2012.

**Decision:** Based on a review of the project described above and field office staff recommendations, I have determined that the project is in conformance with the LUP and is categorically excluded from further environmental analysis. It is my decision to approve the action as proposed, with the following stipulations (if applicable).

**Approved By:** \_\_\_\_\_/S/ Emily Garber\_\_\_\_\_ **Date:** 8/20/2010

**Emily Garber**  
Lower Sonoran Field Manager

STIPULATIONS for AZA-25062  
Lufthansa German Air Right-of-Way (ROW)

Pursuant to the authority vested in the undersigned officer by Bureau Order No. 701 of July 23, 1964 (29 F.R. 10526), a ROW, the details of which are shown above, is hereby granted, subject the following terms and conditions:

1. All valid rights existing on the date of the grant;
2. The ROW herein granted shall be subject to the express covenant that it will be modified, adapted, or discontinued if found by the Secretary to be necessary, without liability or expense to the United States (U.S.), so as not to conflict with the use and occupancy of the land for any authorized works which may be hereafter constructed thereon under the authority of the U.S.;
3. This grant or permit is issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations (CFR) part 2800 and regulations to be promulgated by the Secretary of the Interior pursuant to Public Law 94-579;
4. Any cultural and/or paleontological resources (historic or prehistoric site or object) discovered by the holder or any person working on the holders behalf, on public or federal land, shall be immediately reported to the Authorized Officer (AO). The holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the AO. An evaluation of the discovery will be made the AO to determine the appropriate actions to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of the evaluation and any decision as to the proper mitigation measures will be made by the AO after consulting with the holder;
5. Permittee shall survey and clearly mark the exterior limits of the ROW. All activities directly or indirectly associated with construction or maintenance must be conducted within the limits of the ROW; removal of vegetation and cacti shall be restricted to that absolutely essential to construction or maintenance;
6. The permittee shall not use any pesticides on the Federal lands herein involved without specific prior authorization from the BLM AO;
7. Use of pesticides shall comply with the applicable Federal and state laws. Pesticides shall be used only in accordance with their registered uses and within limitations imposed by the Secretary of the Interior. Prior to the use of pesticides, the holder shall obtain from the AO written approval of a plan showing the type and quantity of material to be used, pest(s) to be controlled, method of application, location of storage and disposal of containers, and any other information deemed necessary by the AO. Emergency use of pesticides shall be approved in writing by the AO prior to such use.
8. If facilities authorized for construction under this ROW grant use Polychlorinated Biphenyls (PCBs) such use shall be in a totally enclosed manner in accordance with provisions of the

Toxic Substances Control Act of 1976 as amended (see 40 CFR 761). Additionally, any release of PCSs (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR part 117 shall be reported as required by the Comprehensive Environmental Response, Compensation, and Liability Act, section 102b. A copy of any report required or requested by any Federal agency or State government as a result of a reportable release or spill or any hazardous material shall be furnished to the AO within 5 working days of the occurrence of the spill or release.

9. This ROW reserves to the Secretary of the Interior, or his lawful delegate, the right to grant additional ROWs or permits for compatible uses over, under or adjacent to the land involved in this grant;
10. Each grant issued for a term of 20 years or more shall, at a minimum, be reviewed by the AO at the end of the 20th year and at regular intervals thereafter not to exceed 10 years. Provided, however, that a ROW or permit granted herein may be reviewed at any time deemed necessary by the AO;
11. Failure of the holder to comply with applicable law or any provision of this ROW grant or permit shall constitute grounds for suspension or termination thereof;
12. The holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public;
13. The holder shall comply with all Federal, State, and local regulations whether or not specifically mentioned within this grant;
14. All design, material, and construction, operation, maintenance, and termination practices shall be in accordance with safe and proven engineering practices;
15. The holder shall inform the AO within 48 hours of any accidents on federal lands that require reporting to the Department of Transportation as required by 49 CFR Part 195;
16. The holder shall protect all survey monuments found within the ROW. Survey monuments include, but are not limited to, General Land Office and BLM Cadastral Survey Corners, reference corners, witness points, U.S. Coastal and Geodetic benchmarks and triangulation stations, military control monuments, and recognizable civil (both public and private) survey monuments. In the event of obliteration or disturbance of any of the above, the holder shall immediately report the incident, in writing, to the AO and the respective installing authority if known. Where General Land Office or BLM ROW monuments or references are obliterated during operations, the holder shall secure the services of a registered land surveyor or a Bureau cadastral surveyor to restore the disturbed monuments and references using surveying procedures found in the Manual of Surveying Instructions for the Survey of the Public Lands in the United States, latest edition. The holder shall record such survey in the appropriate county and send a copy to the AO. If the Bureau cadastral surveyors or other Federal surveyors are used to restore the disturbed survey monument, the holder shall be responsible for the survey cost;

17. Upon demand of the AO, the holder of the ROW shall pay to the U.S. such sums as the AO shall determine to be required to reimburse the U.S. for all administrative and other costs incurred directly or indirectly by the U.S. in monitoring the construction, operation, maintenance, and termination of this grant.
18. The holder of this ROW grant or the holder's successor in interest shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and the regulations of the Secretary of the Interior issued pursuant thereto;
19. The holder shall meet Federal, State, and local emission standards for air quality;
20. The holder shall conduct all activities associated with the construction, operation, and termination of the ROW within the authorized limits of the ROW;
21. It is against the law to collect desert tortoise from the wild. If tortoises are found in the project area, they shall be removed from the area and released, in the shade, unharmed. (When moving a tortoise, approach the tortoise from the end of the shell with the head. Note the direction the tortoise was heading and carefully carry it no more than 150 feet and release it in the direction that it was heading. If possible, place the tortoise in the shade. Carry the tortoise upright, in its normal walking position. Do not tip it from side to side or upside down. If a tortoise becomes frightened, it may empty its bladder as a defense mechanism. The loss of bladder fluids can place the tortoise under additional stress because tortoise store water in the bladder for use during the dry times of year;
22. The holder shall comply with all applicable State and Federal laws and regulations applicable to the authorized use and such additional State and Federal laws, along with the impending regulations, existing or hereafter enacted or promulgated, during the term of the grant. In any event, the holder(s) shall comply with the Toxic Substances Control Act of 1976, as amended (15 U.S.C. 2601, et seq.) with regard to any toxic substances that are used, generated by or stored on the ROW or on facilities authorized under this ROW grant. (See 40 CFR, Part 702-799 and especially, provisions on polychlorinated biphenyls, 40 CFR 761.1-761.193.) Additionally, any release of toxic substances (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR, Part 117 shall be reported as required by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 102b. A copy of any report required or requested by any Federal agency or State government as a result of a reportable release or spill of any toxic substances shall be furnished to the AO concurrent with the filing of the reports to the involved Federal agency or State government;
23. The holder of ROW No. AZA-25062 agrees to indemnify the U.S. against any liability arising from the release of any hazardous substance or hazardous waste (as these terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq. or the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq.) on the ROW (unless the release or threatened release is wholly unrelated to the ROW holder's activity on the ROW. This agreement applies without regard to whether a release is caused by the holder, its agent, or unrelated third parties;



24. At least 60 days prior to termination of the ROW, the holder shall contact the AO to arrange a joint inspection/pre-termination conference of the ROW. This inspection will be held to agree to an acceptable termination (and rehabilitation) plan. This plan shall include, but is not limited to, removal of facilities, drainage structures, or surface material, recontouring, topsoiling, or seeding. The AO must approve the plan in writing prior to the holder's commencement of any termination activities. The holder agrees to incur all costs associated with achieving an acceptable rehabilitation standard;
25. At least 10 days in advance of beginning construction activities on the public lands, the grantee shall submit a timetable of construction to the BLM District Manager (DM), Phoenix District Office (PFO), 21605 N. 7<sup>th</sup> Avenue, Phoenix, Arizona 85027 or current address;
26. Upon completion of construction, the lands shall be restored to as near their natural condition as possible, subject to approval by the DM, at the PDO;
27. Upon grant termination by the AO, all improvements shall be removed from the public lands within 90 days, or otherwise disposed of as directed by the AO;
28. Within 90 days after completion of construction or after all restoration stipulations have been complied with, whichever is later, proof of construction, on forms approved by the Director, shall be submitted to the AO;
29. This ROW may be renewed. If renewed, the ROW will be subject to regulations existing at the time of renewal and such other terms and conditions deemed necessary to protect the public interest;
30. Any exceptions to these requirements must have prior written approval from the AO. Please be advised that due to limits on the available time of qualified personnel, the unpredictability of wildlife, and future weather conditions, request for exceptions to impending wildlife stipulations will only be considered in the event of extraordinary and unavoidable occurrences over which the company has little or no control. Additionally, construction of the road needs to be started in a time frame which would allow for reasonably normal completion prior to the beginning date of wildlife protection stipulations;
31. Public lands affected by this ROW are as follows: G&SRM, Arizona, T. 3 S., R. 1 W., Section 27, SW $\frac{1}{4}$ SW $\frac{1}{4}$  and T. 3 S., R. 1 E., Section 31, SE $\frac{1}{4}$ SE $\frac{1}{4}$ ;
32. Notwithstanding the expiration of this instrument or any renewal thereof, early relinquishment, abandonment, or termination, the provisions of this instrument, to the extent applicable, shall continue in effect and shall be binding on the holder, its successors, or assigns, until they have fully satisfied the obligations and/or liabilities accruing herein before or on account of the expiration, or prior termination, of the grant;

33. The holder shall construct, operate, and maintain the facilities, improvements, and structures within this ROW in strict conformity with the plan of development which was approved and made part of this grant. Any relocation, additional construction, or use that is not in accord with the approved plan of development, shall not be initiated without the prior written approval of the AO. A copy of the complete ROW grant, including all stipulations and approved plan of development, shall be made available on the ROW area during construction, operation, and termination to the AO. Noncompliance with the above will be grounds for an immediate temporary suspension of activities if it constitutes a threat to public health and safety or the environment.
34. The holder shall designate a representative who shall have the authority to act upon and to implement instructions from the AO. The holder's representative shall be available for communication with the AO within a reasonable time when construction or other surface disturbing activities are underway.
35. The ROW will be brush-hogged to prevent unnecessary disturbance. Only those areas where safety, absolute need for construction or other regulations may warrant the use of topsoil removal by blading or scalping. This ROW clearing shall be limited to the limits of the ROW. Suitable topsoil material removed in conjunction with clearing and stripping shall be conserved in stockpiles within the ROW.
36. Holder shall remove only the minimum amount of vegetation necessary for the construction of structures and facilities. Topsoil shall be conserved during excavation and reused as cover on disturbed areas to facilitate regrowth of vegetation;
37. Prior to fill construction, the existing surface shall be sloped to avoid sharp banks and allow equipment operations. No fills shall be made with frozen or water saturated soils. Construction equipment shall be routed evenly over the entire width of the fill to obtain a thorough compaction.
38. Construction holes left open over night shall be covered. Covers shall be secured in place and shall be strong enough to prevent livestock or wildlife from falling through and into a hole.
39. Holder shall limit excavation to the areas of construction. No borrow areas for fill material will be permitted on the site. All off-site borrow areas must be approved in writing by the AO in advance of excavation. All waste material resulting from construction or use of the site by holder shall be removed from the site. All waste disposal sites on public land must be approved in writing by the AO in advance of use.
40. During construction, drilling and other activities covering trenches and slope ends to prevent animals from becoming trapped.

41. No construction or routine maintenance activities shall be performed during periods when the soil is too wet to adequately support construction equipment. If such equipment creates ruts in excess of **four** inches deep, the soil shall be deemed too wet to adequately support construction equipment.
42. The holder shall re-contour the disturbed area and obliterate all earthwork by removing embankments, backfilling excavations, and grading to re-establish the approximate original contours of the land in the ROW.
43. The holder shall be responsible for weed control on disturbed areas within the limits of the ROW. The holder is responsible for consultation with the AO and/or local authorities for acceptable weed control methods (within limits imposed in the grant stipulations).
44. Construction sites shall be maintained in a sanitary condition at all times; waste materials at those sites shall be disposed of promptly at an appropriate waste disposal site. "Waste" means all discarded matter including, but not limited to, human waste, trash, garbage, refuse, oil drums, petroleum products, ashes, and equipment.
45. Holder shall maintain the ROW in a safe, usable condition, as directed by the AO. (A regular maintenance program shall include, but is not limited to, blading, ditching, culvert installation, and surfacing).
46. The holder shall comply with the construction practices and mitigating measures established by 33 CFR 323.4, which sets forth the parameters of the "nationwide permit" required by Section 404 of the Clean Water Act. If the proposed action exceeds the parameters of the nationwide permit, the holder shall obtain an individual permit from the appropriate office of the Army Corps of Engineers and provide the AO with a copy of same. Failure to comply with this requirement shall be cause for suspension or termination of this ROW grant.